



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200940031

JUL - 9 2009

Uniform Issue List: 408.01-00

SEPARATE

Legend:

Decedent A	=	***
Surviving Spouse B	=	***
State C	=	***
Plan D	=	***
Trust E	=	***
Trust F	=	***
Trust G	=	***
Date H	=	***
Date I	=	***
Date J	=	***
Date K	=	***
Date L	=	***
Amount M	=	***
IRA X	=	***

Dear ***:

This is in response to your request for a private letter ruling, submitted by your authorized representative by letter dated December 20, 2007, supplemented by letters dated March 10, 2008 and April 7, 2009 and a Fax dated June 26, 2008, concerning the proper rollover treatment of

distributions from Decedent A's individual retirement account (IRA X) under section 408(d)(3) of the Internal Revenue Code ("Code").

Your authorized representative has submitted the following facts and representations in support of your ruling request:

Decedent A was born on Date H. He died on Date I while a resident of the State C, and while married to Surviving Spouse B. Decedent A was 65 years old at his death. Surviving Spouse B survived Decedent A and was alive as of the date of this ruling request. Surviving Spouse B's date of birth is Date K. Surviving Spouse B has not attained age 70 ½.

At the time of his death, Decedent A had an interest in Plan D with a date of death value of approximately Amount M.

Decedent A established Trust E on Date J. Trust E is valid under State C law and became irrevocable upon his death. Decedent A was the initial trustee of Trust E, and upon his death Surviving Spouse B succeeded him.

After signing Trust E, Decedent A executed a beneficiary designation form designating Trust E the sole and primary beneficiary of his interest in Plan D. Your representative has also provided the Internal Revenue Service ("Service") with information that indicates that the Plan D administrator has advised him that Trust E is the primary beneficiary of Decedent A's account in Plan D.

Article IV of Trust E directs Trust E's Trustee to establish two subtrusts upon Decedent A's death, Trust F and Trust G. Surviving Spouse B is the primary beneficiary of Trust F and Trust G. Upon Decedent A's death, Surviving Spouse B became the sole Trustee of both sub-trusts.

Sections 4.1(A)(1)-(6) of Trust E provide for the allocation to Trust F of an amount of assets sufficient to reduce Decedent A's estate tax at the time of his death to zero if Surviving Spouse B shall survive him. Section 4.1(B)(6) of Trust E provides, in relevant part, that the balance of the assets, if any, are allocable to Trust G. In 2006, the first \$2,000,000 of a decedent's estate was exempt from estate tax.

Section 4.1A of the Trust E states that, "If the Settlor's spouse shall survive the Settlor, the Trustee shall set aside in a separate trust, hereinafter referred to and known as "Trust F," an amount eligible for the marital deduction under Section 2056 of the Internal Revenue Code of 1986, as amended. The Trustee shall allocate to Trust F an amount equal to the minimum amount necessary to provide a marital deduction sufficient to reduce the Federal estate tax on the Settlor's estate to zero after utilizing the applicable credit amount and any other available credits, exemptions and deductions.

Section 4.1A of Trust E goes on to state that the Trustee shall hold, administer and distribute the income and principal of Trust F for the benefit of the Settlor's spouse in the following manner:

1. The trustee shall pay all of the income from Trust F in convenient installments, not less frequently than quarter-annually, to the Settlor's spouse for life.
2. In addition, the Trustee is authorized to distribute to the Settlor's spouse or to any other person designated by the Settlor's spouse, such portions of the principal of Trust F, even to the exhaustion thereof, as the Settlor's spouse shall from time to time request in writing.
3. If the Settlor's spouse shall at any time be unable to exercise the right to withdrawal granted to the Settlor's spouse in subsection 2 above, the Trustee is granted discretion to distribute to the Settlor's spouse such portion of the principal of Trust F, even to the exhaustion thereof, as the Trustee may deem appropriate to suitably support and maintain the Settlor's spouse to the end that the Settlor's spouse may continue to have the advantages of the standard of living to which Settlor's spouse was accustomed during the lifetime of the Settlor.

Consistent with the above-cited language of Trust E. Surviving Spouse B, as the sole trustee of Trust E and the subtrusts created thereunder allocated Decedent A's interest in Plan D to Trust F.

Since Trust E was the named beneficiary of Decedent A's Plan D interest, following Decedent A's death, the Plan D administrator required the entire value of his account to be distributed out of Plan D and to Trust E no later than Date L.

Surviving Spouse B instructed the Plan D administrator to execute a transfer of the entire balance of Decedent A's interest in Plan D to IRA X. IRA X was set up in the in the name of Decedent A (Deceased) for the benefit of Trust F with Surviving Spouse B the named fiduciary of Trust F. The transfer was completed in accordance with the Pension Protection Act of 2006, and relevant provisions of Notice 2007-7, 2007-5 I.R.B. 395 (January 29, 2007) .

Since the time of Decedent A's death no funds from either Decedent A's Plan D interest or from IRA X have been used to pay either administrative expenses or estate taxes associated with the death of Decedent A.

Surviving Spouse B now proposes to transfer, by means of a transfer described in Revenue Ruling 78-406, 1978-2 C.B. 157 (or timely rollover), the full amount standing in IRA X into an IRA set up and maintained in her name.

Based on the above facts and representations, you, through your authorized representative, request the following rulings:

1. That the language of Trust E was/is sufficient to qualify Surviving Spouse B as the sole beneficiary of Trust F and of Decedent A's interest in Plan D;

2. That for purposes of Internal Revenue Code Section ("Section") 402(c), and Section 408(d)(3) and Reg. Section 1.408-8 Question and Answer-5, Surviving Spouse B shall be treated as the sole beneficiary of Decedent A's interest in Plan D and IRA X, and further:
 - a. That IRA X will not be treated as an inherited IRA under Section 408(d)(3)(C);
 - b. That the IRA X account balance may be transferred in a trustee-to-trustee transfer (or rolled over) from IRA X into an IRA set up and maintained in Surviving Spouse B's name alone;
 - c. That amounts transferred into an IRA set up and maintained in Surviving Spouse B's name by means of either a trustee-to-trustee transfer or timely rollover will not be included in Surviving Spouse B's gross income nor in the gross income of Trust F, and thereby will not be subject to income tax under Section 408(d), in the year in which the transfer (or rollover) occurs (2009); and
 - d. That the IRA established in Surviving Spouse B's name, into which the account balance from IRA X is to be transferred via a trustee-to-trustee transfer (or rollover), will be subject to the distribution requirements of Section 401(a)(9)(A).

With respect to your ruling requests, section 402(c)(1) of the Code provides, generally, that if any portion of an eligible rollover distribution from a section 401(a) qualified retirement plan is transferred into an eligible retirement plan, the portion of the distribution so transferred shall not be includible in gross income in the taxable year in which paid.

Section 402(c)(4) of the Code defines "eligible rollover distribution" as any distribution to an employee of all or any portion of the balance to the credit of an employee in a qualified trust except the following distributions:

- A. any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made –
 - (i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or
 - (ii) for a specified period of 10 years or more,
- B. any distribution to the extent the distribution is required under section 401(a)(9), and
- C. any distribution which is made upon the hardship of the employee.

Section 402(c)(5) of the Code states that for purposes of this title, a transfer to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B) resulting in any portion of a distribution being excluded from gross income under paragraph (1) shall be treated as a rollover contribution described in section 408(d)(3).

Section 402(c)(8)(B) of the Code defines the term "eligible retirement plan". An IRA described in section 408(a) of the Code is included in the definition.

Section 402(c)(3) of the Code provides, generally, that section 402(c)(1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

Section 402(c)(9) of the Code provides, generally, if a distribution attributable to an employee is paid to the spouse of the employee after the employee's death, section 402(c) of the Code will apply to such distribution in the same manner as if the spouse were the employee.

Section 1.402(c)-2 of the regulations, Q&A 12, provides, generally, that if a distribution attributable to an employee is paid to the employee's surviving spouse, section 402(c) applies to the distribution in the same manner as if the spouse were the employee. Thus, a distribution to the surviving spouse of an employee is an eligible rollover distribution if it meets the applicable requirements of section 402(c)(2) and (4) and the associated regulations.

Section 401(a)(31)(A) of the Code provides that a trust shall constitute a section 401(a) qualified trust only if the plan of which such trust is a part provides that if the distributee of any eligible rollover distribution:

- (i) elects to have such distribution paid directly to an eligible retirement plan, and
- (ii) specifies such eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe),

such distribution shall be in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

Code section 408(d)(1) provides that, except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Code section 408(d)(3) provides that section 408(d)(1) does not apply to a rollover contribution if such contribution satisfies the requirements of sections 408(d)(3)(A) and (d)(3)(B).

Code section 408(d)(3)(A)(i) provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the account is maintained if the entire amount received (including money and any other property) is paid into an IRA (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution.

Code section 408(d)(3)(C)(i) provides, in pertinent part, that, in the case of an inherited IRA, section 408(d)(3) shall not apply to any amount received by an individual from such account (and no amount transferred from such account to another IRA shall be excluded from income by reason of such transfer), and such inherited account shall not be treated as an IRA for purposes of determining whether any other amount is a rollover contribution.

Code section 408(d)(3)(C)(ii) provides that an IRA shall be treated as inherited if the individual for whose benefit the account is maintained acquired such account by reason of the death of

another individual, and such individual was not the surviving spouse of such other individual. Thus, pursuant to Code section 408(d)(3)(C)(ii), a surviving spouse who acquires IRA proceeds from and by reason of the death of her husband, may elect to treat those IRA proceeds as her own and roll them over into her own IRA.

Code section 408(d)(3)(E) of the Code provides, in general, that the rollover rules of Code section 408(d)(3) do not apply to any amounts required to be distributed in accordance with Code sections 401(a)(9) and 408(a)(6).

Code section 401(a)(9)(A) provides, in relevant part, that distributions from a retirement plan qualified within the meaning of Code section 401(a) must begin no later than the plan participant's "required beginning date" and must be paid over a period of time that may extend to the joint life expectancies of the plan participant and his/her designated beneficiary.

Code section 408(a)(6) extends the Code section 401(a)(9) requirements to IRAs described in Code section 408(a). Thus, in short, an IRA owner may receive required distributions over her life expectancy or over a period not to exceed the joint life expectancies of the IRA holder and her designated beneficiary.

Section 1.408-8 of the Regulations, Question and Answer 5, provides that a surviving spouse of an IRA owner may elect to treat the spouse's entire interest as a beneficiary in an individual's IRA as the spouse's own IRA. In order to make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust.

The Preamble to the regulations provides, in relevant part, that a surviving spouse who actually receives a distribution from an IRA is permitted to roll that distribution over into his/her own IRA even if the spouse is not the sole beneficiary of the deceased's IRA as long as the rollover is accomplished with the requisite 60 day period. A rollover may be accomplished even if the IRA assets pass through either a trust and/or an estate.

Revenue Ruling 78-406, 1978-2 C.B. 157, provides that the direct transfer of funds from one IRA trustee to another IRA trustee, even if at the behest of the IRA holder, does not constitute a payment or distribution to a participant, payee or distributee as those terms are used in Code section 408(d). Furthermore, such a transfer does not constitute a rollover distribution.

Additionally, a trustee to trustee transfer, as described in Rev. Rul. 78-406, does not constitute a distribution or payment as those terms are defined for purposes of Code section 408(d).

With respect to your ruling requests, the Service notes that, pursuant to the language of Trust E, and the relevant provisions governing the administration of Trust F, Surviving Spouse B was/is

entitled to the income of Trust F and was also entitled to withdraw as much of the principal thereof (including the entire principal) as she desired. Thus, Surviving Spouse B had/has the absolute right to the assets in Trust F including Decedent A's interest in Plan D.

With further respect to your ruling requests, generally, if either a decedent's plan or IRA proceeds pass through a third party, e.g., a trust, and then are distributed to the decedent's surviving spouse, said spouse will be treated as acquiring them from the third party and not from the decedent. Thus, generally, said surviving spouse will not be eligible to roll over either the qualified plan or the IRA proceeds into his/her IRA.

In the current case, Surviving Spouse B is the sole trustee of Trust E and the primary beneficiary and sole Trustee of Trust F and Trust G with the absolute right, as noted above, to the assets of Trust F. Thus, Surviving Spouse B would have been eligible to roll over, or transfer by means of a trustee-to-trustee transfer, Decedent A's interest in Plan D to an IRA set up and maintained in her name. However, as noted above, said rollover or transfer was not accomplished.

Instead, the entire balance of Decedent A's interest in Plan D was transferred to IRA X which was set up and is maintained in the name of the Decedent A (Deceased) for the benefit of Trust F. IRA X distributions are payable to Trust F. Surviving Spouse B is the fiduciary (trustee) of Trust F. In short, IRA X is maintained in the name of Decedent A for the benefit of the same beneficiary that was the beneficiary of Decedent A's interest in Plan D.

Surviving Spouse B retains her right under the terms of Trust F to the income of Trust F and to as much Trust F principal as she desires. Thus, Surviving Spouse B's right to the assets of IRA X is unfettered as was her right to Decedent A's interest in Plan D prior to the transfer of said interest to IRA X. As a result; Surviving Spouse B may roll over, or transfer by means of a section 78-406 transfer, the IRA X amounts into an IRA set up and maintained in her name. The transaction that is described in this ruling request, whereby Decedent A's Plan D interest was transferred to IRA X, did not adversely impinge upon Surviving Spouse B's ability to convert assets held in the name of Decedent A (originally his interest in Plan D) to assets held in the name of Surviving Spouse B.

Thus, with respect to your ruling requests, we conclude:

1. That the language of Trust E was/is sufficient to qualify Surviving Spouse B as the sole beneficiary of Trust F and of Decedent A's interest in Plan D;
2. That for purposes of Internal Revenue Code Section ("Section") 402(c), and Section 408(d)(3) and Reg. Section 1.408-8, Question and Answer-5, Surviving Spouse B shall be treated as the sole beneficiary of Decedent A's interest in Plan D and IRA X, and further:
 - a. That IRA X will not be treated as an inherited IRA under Section 408(d)(3)(C);
 - b. That the IRA X account balance may be rolled over or transferred from IRA X into an IRA set up and maintained in Surviving Spouse B's name alone;

- c. That amounts transferred or rolled over into an IRA set up and maintained in Surviving Spouse B's name will not be included in Surviving Spouse B's gross income nor in the gross income of Trust F, and thereby will not be subject to income tax under Section 408(d), in the year in which the transfer (or rollover) occurs (2009); and
- d. That the IRA established in Surviving Spouse B's name, into which the account balance from IRA X is to be transferred (or rolled over), will be subject to the distribution requirements of Section 401(a)(9)(A).

This ruling letter assumes that IRA X is qualified under section 408(a) of the Code at all times relevant thereto. It also assumes that the IRA to be set up and maintained in the Surviving Spouse B's name will also meet the requirements of Code section 408(a) at all time relevant thereto. Furthermore, it assumes that if Surviving Spouse B rolls over a distribution from IRA X into an IRA set up and maintained in her name, the rollover will occur within the time frame set forth in Code section 408(d)(3)(A)(i).

Note: this letter ruling does not authorize the transfer or rollover of amounts from IRA X into the IRA to be set up and maintained in the name of Surviving Spouse B which either have been or are required under Code section 401(a)(9) applicable to IRAs pursuant to Code section 408(a)(6) for the years 2007 through 2009 (if any).

This ruling is directed only to Surviving Spouse B who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions, please call *** (ID: ***) at (***)***-*** or fax at (***)***.
***.

Sincerely Yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Notice of Intention to Disclose
Deleted Copy of Ruling

CC:
